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(8)

Lex Talionis:

Or the Law of Marque or Reprizals.

Fully repreſented in the Caſe of Spoyls and Depredations, upon the Ships, Goods, and Factories of Sir. WILLIAM COURTEN, and his Partners in the *Eaſt-Indies*, *China*, and *Japan*.

Whereupon Letters Patents for Reprizals were Granted under the Great Seal of ENGLAND, to continue effectual in the Law againſt the STATES GENERAL of the *United Provinces*, and their Subjects; for Recovering of the Sum of 151612 *l.* with Coſts and Damages mentioned in the ſaid Patent.

Together with three Several *PROPOSALS* of the Creditors, to the KING, and their anſwer (in a POSTSCRIPT) to the Lord *Chancellour*'s Arguments upon the *Scire Facias*, brought by Sir. *Robert Sawyer*, His Majeſties Attorney General, concerning the *Letters Patents* aforeſaid.

Wh. Kennett.

[George Carew]

LONDON,

Printed in the Year, MDCLXXXII.

Sept 29. 1924

To the Right Honourable
CHARLES Earl of SHREWSBURY.

Lord

THis following Case being drawn up, and Printed by some of the Agents and Solicitors of the Creditors of Sir William Courten and Sir Paul Pyndar, for satisfaction of several Persons that were earnest to have it Published; and Communicated to all the late Members of both Houses of Parliament; I obstructed the progress thereof, being resolved that it should not go so nakedly into the world without any Title or Dedication, and then only to the view of such Persons as are principally Interessed and Concerned therein; I am obliged to let Your Lordship and the rest of the Creditors know, that I have been in my Quality, as Administrator and Assignee, both Active and Passive, at home and abroad, ever since his Majesties Restauration, in the pursuit of such our Rights and Properties, that cannot be Mortified or Extinguished, except Mankind be Exterminated.

There are Volumes of Examinations and Depositions by me, taken from the Servants, Officers, Factors and Sea-men, imployed by Sir William Courten, in Discovering, Planting, and Fortifying the Island of Barbadoes; manifesting to all the World, that he was the Original Proprietor of that Island, and so Confirmed to him and his Heirs, by Letters Patents, under the great Seal of England, in the third year of King Charles the first: Yet no Restitution or Reparation could be obtained to this day, for the forceable Entries and Intrusions made by James late Earl of Carlisle, and his Complices upon Sir William Courten in the said Island.

There are as many more Volumes of Examinations, Depositions, Memorials, Answers, Replications, Rejoynders, and other proceedings in several Languages by me, in the case of the East-India Spoyls and Depredations upon Courten and Pyndar, before the values of the Loss and Damages were reduced to a certainty, by Letters Patents under the great Seal of England; which vested the Interest with an Authority irrevokable in the Grantees for recovery thereof, according to the Rules of Law and Common Right; Yet no Restitution or Compensation can be obtained for the same.

There are little less Volumes of Proceedings upon the Civil Actions, depending in Holland and Zealand, against the Heirs and Executors of Sir James Cats, Jacob Pergens, and Peter Boudaen, for Monies lent upon Bonds, and Accompts standing out in Trade. Yet all have terminated in contempts of the Law and positive Denialls of Justice, in this Age of ingratitude and forgetfulness.

Your Grandfather, John Earl of Shrewsbury, having lent the Sum of five and twenty hundred pounds to Sir William Courten, towards his first Expedition into the East-Indies, China, and Japan, upon whose foundation the present great East-India Trade is erected. After the Death of Sir William; William Courten his Son and Heir, together with Sir Edward Littleton and others, entred into new Security in the year 1639 for the same Debt (being

ing all the ready Money then in your Family.) Whereupon Francis *Earl of* Shrewsbury, *your* Father, *with divers other great Sufferers* (*Creditors of* Sir William Courten, *and his Son, as alſo of* Sir Paul Pyndar) *applied themſelves in company with me upon the Kings moſt happy Reſtauration, for ſome ſeaſonable relief againſt the* Hollanders *and* Zealanders, *that had lived upon the ſpoyls of all Nations.*

His Majeſty being then upon a Treaty of Common Alliance *with the* States General: *After eight months debate in* Courtens *affair, came to this Stipulation in the year* 1662. *That upon reſtitution of the* Iſland *of* Polleron, *and ſatisfaction to be made for the Spoyls and Depredations concerning the two Ships named the* Bona Eſperanza *and* Henry Bona Adventura; *All other Loſſes and Damages of his Subjects; and even that of* Amboyna, *ſhould be Mortified and Obliterated, that is to ſay,* No Soveraign remedy ſhould be given to any of them by his Majeſty, for the ſaid Damages by Reprizalls; *which was Mutually Signed, and Solemnly Ratified accordingly.*

This Stipulation *was purſued by ſeveral Memorialls to the* States General, *for the ſpace of two years, at the* Hague, *and ſeconded by divers Orders from the* Council Board, *and ſeveral* Letters *of Recomendation from his* Maieſty, *to the ſaid* States, *under his* Sign Manual, *which proving all ineffectual. A Complaint thereof being brought before the* Houſe of Commons, *in the year* 1664. *was there Eſpouſed with vaſt* Royal Aides, *towards the Protection and Relief of the Complaynants: Therefore they are under great miſtakes, both in matters of Fact and Judgment of Law, that Report the King was either Surprized or Deceived in his Grant, or that the* States General *had not due Notice of Paſſing the* Letters Patents, *for Reſtitution to be made to the ſaid* Francis *Earl of* Shrewsbury, *and others in the ſaid Patent Mentioned and Expreſſed; being grounded upon ſeveral Acts of* Parliament, *and the Ancient Law of* Marque, *and* Reprizals: *The Inſtances whereof, once brought home to a* Fiat *under the great Seal of* England, *becomes a Decree unalterable, like the Laws of the* Medes *and* Perſians.

I beg Your Lordſhips Pardon and Patience, in craving Your Honours Serious Conſideration upon the ſaid Caſe; and the Creditors Propoſals to his Majeſty; with the Poſtſcript after them, in anſwer to the Lord Chancellors *Arguments, on* Friday *the* 26th. *of* May *laſt, when his Lordſhip gave Judgment for the King, upon the* Scire-Facias, *concerning the ſaid* Letters Patents, *wherein Your Grandfathers Debt is included; yet further ſecured by Collateral Covenants from my ſelf, reſpectively to Your Honour and Sir* Thomas Meres *for another Debt of* 2000 l. *Contracted in the year* 1641, *upon the obligation of* William Courten *Eſq; Sir* Edward Littleton *and John Earl of* Bridgewater, *to* Elizabeth *Viſcounteſs* Cambden, *due to the ſaid Sir* Thomas Meres *as Executor of Sir* Erazmus de la Fountain, *Executor of the ſaid Viſcounteſs; not doubting of Your Dilligence and Indeavours for obtaining thereof, by all ways and means that are Honourable and Juſt, more eſpecially for thoſe Crying Debts due to many hundreds of Orphants and Widows, claiming under my Adminiſtration, (whoſe cauſe I ſhall never deſert:) Yet conſtantly remaining*

(SIR,)
Your Lordſhips moſt faithful
and humble Servant.
George Carew.

Richmond *Auguſt* 2d. 1682.

The

The Caſe *between the* King *and* Carew, *concerning the* Letters Patents *for Repriſals (hereunto annexted) againſt the* Hollanders; *Briefly and faithfully ſtated, for ſatisfaction of all perſons concerned.*

George Carew of *Richmond*, in the County of *Surrey* Eſq; Adminiſtrator of the Goods and Chattels of Sir *William Courten* Knight deceaſed, with his Will annexed; having conteſted at the *Hague* and *Amſterdam*, after the Kings Reſtoration, for the ſpace of fifteen Months, concerning the Spoils and Depredations, upon Sir *William Courten's* Ships and Factories: A *Proviſoe* was made in the fifteenth Article of the Treaty concluded at LONDON, between the King and the *States General*, the 4th. of *September* 1662. that ſatisfaction and reparation ſhould be made by the *Eaſt-India* Company of the *Netherlands*, for the two Ships named the *Bona Eſperanza* and *Henry Bona Adventura*, with their Freights and Lading.

In purſuance of the ſaid Treaty, *Carew* having Expended and Diſburſed divers great Sums of Money, both in *Holland* and *England* without effect, he was prompted by ſeveral Miniſters of State at *Whitehall*, to Addreſs himſelf by Petition to the Commons in Parliament, in the year 1664. for Relief, who referred the ſame to the Committee of Grievances accordingly.

Sir *Tho. Clifford*, then Chairman of the ſaid Committee, after Examination of all the Papers and Depoſitions concerning this Caſe, brought in by Sir *Thomas Littleton*, Reported that the Loſs and Damages amounted to the Sum of One Hundred and Fifty Thouſand pounds Sterling and upwards, hinting at the evil conſequences thereof, to the Honour and Intereſt of the Nation, if thoſe Damages were not ſatisfied and repaired unto the Families of Sir *William Courten* and Sir *Paul Pindar*, who had merited ſo much from the Crown and Kingdom.

Soon after a War inſued, whereupon the Commons Voted to aſſiſt the

King with their Lives and Fortunes, unto whom they granted ſeveral Millions of Money for the Proſecution thereof.

In the Month of *May* 1665. the Cauſe concerning the ſaid Spoils and Depredations which had been debated in the Admiralty, in Council, and in Parliament, was reduced to a certainty, for ſatisfaction by Letters Patents for Repriſals under the Great Seal of *England*, wherein Sir *Edmund Turners* Name is uſed in Truſt, *Carew* having the Intereſt in Law on the behalf of himſelf and others, the *Dutch* Ambaſſador then Reſident in *England* had notice of all the proceedings, as it is recited in the body of the ſaid Patent, which paſſed through the greateſt Offices of Truſt in the Kingdom, upon mature Conſideration.

The Warrant for paſſing the ſaid Patent, iſſued out of the Lord *Arlingtons* Office, then Principal Secretary of State, containing two clauſes for continuance of the Grant, until the Debt of 151612 l. with Damages ſhould be recovered, which was debated three Months, by the Lord Chancellor *Hyde*, before it paſſed the Great Seal, Sir *William Turner* and Sir *Robert Wiſeman* the Kings and Dukes Advocates general, being often conſulted therein, affirmed, That it was conſonant to the Laws of Nature and Nations, that the ſaid Debt and Damages ſhould be ſatisfied and repaired. A Preſident thereof being ſhewn under the Great Seal, in the late Kings time, in the Caſe of *Paulet*, a Merchant, who had the like Letters of Repriſals againſt the *Spaniards*, to continue effectual in the Law, until the Debt and Damages ſhould be Repriſed, who upon a Peace made with *Spain*, had the remainder of his Debt unſatisfied.

In the year 1666. *Carew* and the Creditors claiming under him, procured ſeveral Duplicates and Exemplifications of the ſaid Letters Patents, and put the ſame in execution, by deputations againſt the *Hollanders*, who Trading in divers Bottoms, under the colours of *Sweeds*, *Hamburgers* and other Neighboring Princes and States in Amity with *England*, the very charges of equipping out private men of War could not be gotten, the Ships brought in for Prizes, being reclaimed and reſtored, as by the Rigiſter of the Admiralty Court appears.

However Sir *William Coventry* then Secretary to his Royal Highneſs complaining, That thoſe ſpecial Letters of Repriſal, obſtructed the Lord High-Admirals profits of Tenths by Letters of Marque in time of War, & that the Kings Ships were deprived of Seamen: A Proclamation iſſued out the 10th. of *Auguſt* 1666. to ſuſpend the Execution of the ſaid Letters Patents, *pro tempore*. Notwithſtanding his Royal Highneſs was gratified with a Months Tax for his Heroick Courage at Sea.

In-

In the year 1667. a Peace was concluded at *Breda*, whereby all Letters of Repriſals were mentioned to be revoked, whereupon the ſaid *Carew* and the Creditors remained paſſive, until the year 1671. when another War was proclaimed, the King having particularly owned this Cauſe, declaring, *That he was obliged in Juſtice and Honour to ſee that Debt and Damages, mentioned in the Letters Patents aforeſaid, to be ſatisfied and repaired*; the Lords of the Privy Council having alſo affirmed, That all paſt Treaties were abſolutely cancelled, as if no ſuch Treaties ever had been made.

Then the ſaid *Carew* was diſpatcht away with Orders of the Councel Table, Referrences and Inſtructions, with the Kings Letters to his Ambaſſadors and Plenipotentiaries, to inſiſt upon plenary ſatisfaction and Reparation in any Treaty to be made with the States; The King expreſſing in his Leters under his Sign manuall his care to protect his Subjects in their juſt Rights, as well as to aſſiſt them in the recovery thereof.

In the Month of *Auguſt* 1672. It ſo hapned that *Carew* and his Servants were Impriſoned by the States of *Holland* as Spies, for ſeeking after Juſtice, and detained cloſe Priſoners without acceſs (and threatned with Death) during the War, which ended in a common Alliance, in the year 1674. upon the conſideration of *Eight hundred Thouſand Patacoons* (*inter alia*) to be paid to the King in four years, for Damages yet three parts thereof were aſſigned to the Prince of *Orange*, and the fourth part received for other ſervices by Alderman *Backwel*, upon his Majeſties account, but the Debt and Damages aſcertained for the Spoils and Depredations aforeſaid, was left in *ſtatu quo*, to the remedy at Law preſcribed.

In the year 1680. divers of the Creditors of Sir *William Courter*, Sir *Paul Pindar* and Sir *Edward Littleton*, having importuned the ſaid *Carew* to put in execution the ſaid Letters of Repriſals, ſince they had no ſatisfaction either out of the Prizes taken by the Kings Ships, during the War, nor out of the ſaid *Patacoons*, or any other waies or means whatſoever, notwithſtanding their ſeveral Addreſſes to the *King*, the *States*, and the Prince of *Orange*, for that purpoſe.

Then *Carew* being adviſed that ſeveral Writs at Common Law, in caſe of a Spoil at Sea, lay againſt the Subjects of Forraign Princes and their Goods found in *England*, until the Statute of *Edw.* the third, provided that the only Remedy ſhould be by the Law of Marque or Repriſals, without Fraud or Deceit, for all Damages upon Spoils, which being aſcertained and reduced into a Grant, under the Great Seal of *England*, became ſuch an Intereſt veſted in

the Grantees, coupled with an Authority that could not be taken away without ſatisfaction made to the Parties intereſſed and injured.

And further adviſed, That Soveraign Princes in all parts of the World, having once granted ſuch Letters of Repriſals for Spoils and Wrongs done to their Subjects, hold themſelves obliged to ſee right done by one means or other, being truſted with the power of Peace and War: A Prerogative ſubſervient to the immutable Laws of Nature, and right Reaſon.

Then *Carew* Equipped out a ſmall Ship called the *George Bona Adventura*, under the command of Captain *Compton Gwyther*, who took a Fly-Boat laden with Wine and Cheſnuts near the *Iſle of Wight*, called the *Love of Rotterdam*, to awaken thoſe that ought to make reparations, whereupon the *Dutch* Ambaſſador moved for *Proclamations*, *Superſedeas* and *ſcire facias*, but nothing was offered for ſatisfaction or repairation upon any account whatſoever, for the Debt of 15161 2 l. although no part of that principal money, or of ten thouſand pounds more expended and disburſed by the ſaid *George Carew*, in the proſecution of his right, was recovered or received, as by his Affidavit filed in *Chancery*, hereunto annexed alſo appears.

Then *Compton Gwyther* and his Mariners, being Apprehended were tryed for Pyracy and Fellony, by a ſpecial Commiſſion of *Oyer* and *Terminer*, grounded upon the Statute of *Henry* the VIII. at the New Hall, in the Court of Marſhalſea in *Southwark*, on the 18th. of *Febr.* 1680. where the Jury acquitted them as not acting with a Fellonious intent, under the colour of that Commiſſion for Repriſals, Yet the Ship was reſtored by the King to the *Dutch*.

In the Month following Sir *Robert Sawyer*, the Attorney General, brought a *ſcire facias* in the Pettibag againſt Sir *Edmund Turner*, and *George Carew*, to ſhew cauſe Why the LETTERS PATENTS ſhould not be revoked, repeald, or made null and void; Whereupon *Slingsby Bethel* and *Henry Corniſh* Eſquires, the Sheriffs, gave perſonal notice, and returned the ſaid VVrit in Eaſter Term 1681. Then *Turnor* and *Carew* Appeared and Pleaded the ſame Term, which lay Dormant until Eaſter-Term, 1682. when the Attorney General put in a *Demurrer*: whereunto the Defendants rejoyned, and the Record being Read in Court (conſiſting of five large Skins of Parchment) on *Saturday* the 20 of *May*, the Lord High Chancellor of *England*, appointed *Tueſday* following to Argue the ſame; whereupon the Defendants Councel moved the Court for longer time, in regard they could not have Copies of the Record VVritten out ſo ſoon, yet it was denied; and his Lordſhip gave Judgment for the

King

King, without Arguing the ſame by the Defendants Councel, who will in due time be ready to make appear not only divers Errors in the ſaid *Scire facias*. But that Judgment ought not by the Laws of the Land, to be given on the ſaid *ſcire facias*: his Lordſhips Judgment being reverſable by Writ of Error or Appeal.

But in the Interval, between the *ſcire facias* brought and the *Demurrer* put in, *Carew* being preſſed to enter other Ships and Pinnaces (according to his Covenants) to Repriſe ſome part of the Debt and Dammages, many Widdows and Orphants Creditors of *Courten* and *Pindar*, being concerned therein; The Ship named the *America*, with 4 others, were offer'd, at their inſtance, to be entred in the *Admiralty*, and Cap. *W. Hawley* to be Commander of the *America*. But Sir *R. Lloyd* & Mr. *Bedford* refuſing to take any other Notice of the Paper, than only Reading and returning the ſame, it was Regiſtred in the *Chancery*, and a Deputation given to the ſaid Cap. *Hawley* upon an Authentick Copy of the ſaid Letters Patents to put the ſame in Execution; who in Proſecution thereof, took a Fly-boat laden with *Wheat* and *Rye*, called the *Young Schonemaker of Dort*, under Sayl about three Leagues from the *Texell*, and then brought the ſame into *Woodbridge* Harbour, and ſent the Bills of Lading with all the Papers on Board unto Mr. *Thomas Broadrick* Procter in the Admiralty, in order to a Sentence of Condemnation. Then a Warrant dated 29th of *April* 1682. iſſued from the Lords Commiſſioners of the Admiralty, directed to Mr. *William Foynes* the Marſhal, who reſtored the Prize to the *Dutch*, and apprehended Captain *Hawley* and his Men for Pyracy and Fellony, and committed them to the Priſon of the *Marſhalſea*, in order to their Tryal on *Saturday* the 10th of *June* 1682.

Dom. Rex verſ. Carew *& al' ſuper Brev. ſcire facias in ſuprem' Curia Cancellar'.*

Mr. Carew's *Affidavit Filed in* Chancery:

George Carew of *Richmond* in the County of *Surrey* Eſq; one of the Defendants in this Cauſe, maketh Oath That he this Deponent being adviſed by his Councel Learned in the Laws, that a ſpecial *Proviſo* was made in the fifteenth Article of the Treaty Concluded at *London*, between the *King* and the *States General*, Dated the 4th of *September* 1662. For Satisfaction and Repairation of the Spoyles and Depredations of the Two Ships, called, The *Bona Eſperanza*, and *Henry Bona Adventura*, and the Letters Patents for Repriſals

priſals in purſuance thereof Recited, in the PLEA to the ſaid *ſcire facias* he this Deponent valued himſelf, as veſted with ſuch a right and property in the Debt and Damages, Aſcertained by the Grant in the ſaid Letters Patents, That he this Deponent diſburſed and expended the ſum of Ten Thouſand Pounds and Upwards in the Proſecution of his Right; Three Thouſand and Five Hundred Pounds of the ſaid Money being furniſhed by *Thomas Foley* Eſq; upon the purchaſe of *Aunton* Farm in *Worceſter-ſhire*, from this Deponent, Two Thouſand Pounds more thereof lent to this Deponent by *Tho. Colman* Eſq; upon the Mortgage of Eight Houſes in the City of *London*, and Two Thouſand Five Hundred Pounds by Sir *James Butler*, upon a Conditional Surrender of a Coppy-hold Eſtate in *Richmond*; Whereupon there is a Decree in this Court to foreclоſe this Deponant from the Equity of Redemption if the Principal Money Intereſt and Charges be not paid by *Chriſtmas* next, moſt part of the ſaid 8000 *l.* being paid to Sir *William Powell*, Sir *John Ayton* and others, claiming their Debts under this Deponants Adminiſtration, by Judgments and other Securities from Sir *Paul Pindar* and Sir *William Courten*. And this Deponant farther ſaith, That He this Deponent hath not Directly nor Indirectly received any Satisfaction for the principal Debt of 151612 *l.* mentioned in the ſaid Letters Patents for the ſaid Spoyles and Depredations, ſave only the Sum of 50 *l.* Sterling, paid by Alderman *Backwell*, by the Earl of *Danby*'s Order out of the 800000 Pattacoons, and 150 *l.* more by the *States of Holland*, towards this Deponents extraordinary Charges in Priſon. The King having paid the ordinary Coſts and Expences of this Deponents Impriſonment, with two Servants for the ſpace of 22 Months at the *Hague*, during the laſt War; notwithſtanding there is One Hundred & Fifty Thouſand Pounds Sterling, and upwards, due to the Creditors of Sir *William Courten*, and Sir *Paul Pindar* upon Bonds and Judgments, wherein many poor Orphants and Widdows are concerned. And this Deponent ſaith, That the Record conſiſting of five Skins of Parchment, appointed to be Argued on *Fryday* 26 of this Inſtant *May*. This Deponants Councel that Subſcribed the Plea cannot be ready in ſo ſhort a time to Argue the ſeveral Points in Iſſue, the Record being but Read in Court on *Saturday* laſt, & the Defendants having Rejoyned in the *Demurrer* to the PLEA but two days before.

Jurat 25 *die Maij Anno R.Rs.* Carol. *ſec. &c.* xxxiiij. *Coram me*

George Carew: *Jo. Coell.*

An Exact Account of the Proceedings at the *Marſhalſea*, June 10: 1682. *againſt Cap:* Hawley, *and his men, upon Pretence of* Piracy, *acting under Letters Patents for* Repriſals *againſt the* Hollanders.

ON the 10th of *June* inſtant, the Commiſſioners appointed to try Capt. *Hawley* and his men, upon the Stat. of *Hen.*8. for *Paracy* & *Fellony*. Being met at the New Hall in the Marſhals Court in *Southwark*. The Commiſſion was read by Mr. *Tho. Bedford*, the Regiſter of the Admiralty, Sir *Tho. Exton*, as Preſident of the Court, gave the Charge: Then the Sheriff of *Surry* brought in the Precepts, whereupon the Jurors were return'd and Sworn: The Indictment then was delivered to the Grand Jury who found the Bill. Unto which the Priſoners pleaded, NOT GUILTY, Took their Tryal, and put themſelves upon God and the Country.

Then Sir *Richard Lloyd*, Council for the King, alleadged to the Petty Jury that the Letters Patents for Repriſals, aforeſaid, were made null and void by Treaty of STATE, *Supercedeas*, *Proclamation*, and *Judgment* of the Ld Chancellor upon a *Scire facias*: Yet was ſo tender of the KING's Honour, That he would not ſuffer the Letters Patents to be read openly in Court, but only by the Jurors themſelves privately. Whereupon the Council for the Priſoners inſiſted, That there were not Arguments ſuffered to be made on the Defendants ſide, upon the Atturney Generals *Demurrer* to the Defendants Plea, which conſiſted of 5 Skins of Parchment: the Record being read on *Saturday* the 20th of *May*, Judgment was given in the Week following, before Copies could be made of the Record. However Mr. *Carew* himſelf perſiſted, at this laſt Tryal, That nothing could affect the Patent but Satisfaction: For That by the Laws & Statutes of *England*, Letters Patents in this Caſe, which veſted an Intereſt in the Patentees, by eſpecial Grant (as ſet forth in his Plea to the *ſcire facias*) could not be revok'd or taken away without ſatisfaction firſt made to the parties that ſuffered the wrong. And that the Ld Chancellors Judgment is as avoidable upon a Writ of Error for Miſtakes in his Opinion, as the Grants in the Letters Patents are avoidable upon Satisfaction made: for that no Act of State (unleſs an Act of Parliament) can bind the particular Intereſts of the Subject without Satisfaction: and the *ſcire facias* being defective, the Judgment given upon it, is null in it ſelf, there being no ſuch Letters Patents as are mentioned in the *Scire facias*, returned by the Sheriffs, as aforeſaid, for Reſtitution to *Carolo tunc Comiti Salop*, &c.

Then the matters of Fact being made out by the Dutch men the Maſter &

others

others in the Ship call'd the *Schonemaker* of *Dort*, againſt Cap. *Hawley* and his men, That they took the ſhip by force, and poſſeſt themſelves of the Ship and Lading. To which the Priſoners made little Defence, ſave only, That they did nothing felloniouſly or pyratically, but acted by Virtue of a Commiſſion and Deputation indorſed upon the back-ſide of an Authentick Copy of the Letters Patents, hereunto annexed, which was put into the Jurors hands to peruſe; who brought them in *Not Guilty*.

Whereupon Mr. *Joynes* the Marſhal, immediately areſted Mr. *Carew*, Capt. *Hawley*, and his men in a joynt Action for 1000l. Dammages, by Writ out of the Admiralty, upon the Dutch Ambaſſadors deſire, at the Suit of *Willem de Widt, Johanes van Eich waer, Alewyn van Volkenhoven, Ludewyck Terwe, Jacob van Harrlem, Antony Walbeeck, Antony van d Sambrewel*, all Inhabitants of *Dort*, that were the Owners of the ſaid ſhip and lading; but upon Mr. *Carew's* complaint to the Court, then ſitting, and the Dutch Ambaſſador alſo preſent, he was diſcharged *pro tempore*. But within two days after gave ſufficient Bail by two eminent Citizens to anſwer the ſaid Action both for himſelf, the Capt. and his Company.

Then ſome of the moſt conſiderable Creditors claiming under *Carew's* Adminiſtration being unſatisfied with theſe Proceedings, cauſed Mr. *Joynes* to be areſted by Writ out of the King's Bench for 20000l. Dammages, to anſwer the Value of the ſaid Ship and Lading: having diſpoſſeſt the ſaid Cap. *Hawly*, and his men thereof, in an extrajudicial way, upon pretence of a Warrant from the Lords Commiſſioners of the Admiralty, dated about the 29 of *April* 1682. who brought the ſaid Cap and his men Priſoners, and put them into the cuſtody of Mr. *Lowman*, the Keeper of the County Gaol in *Southwark*, where they were detained 44 dayes, or thereabouts, cloſe Priſoners at their own coſts and charges, and after they were legally diſcharged, were forced to pay Mr. *Joynes* and the Regiſter of the Admiralty, ſeveral exorbitant Fees, amounting to 61. 10 s. a man, or thereabouts, to procure which Money, they were forc'd to ſell their Beds from under them: For all which the Captain and his men are adviſed to take their due Courſe at Law againſt them for their reſpective Dammages: That is to ſay, Cap. *Wil. Hawley, Richard Waſhington, Ri. Terret, Jerom Hawley, Th. Tomkins, John Tayler*, and *Glanvil Lamboy*.

☞ Its Remarkable, That the Dutch Ambaſſadors are very clamorous at Court, upon any Complaint of the Hollanders, whoſe ſhips and goods are ſuddenly reſtored right or wrong, although they refuſe to appear for the Heirs and Executors of *Ja. Pergens* of *Amſterdam*, & *Pet: Boudaen* of *Middleburgh*, who have got into their hands and Poſſeſſions the Effects of Sir *W. Courtens*, & Sir. *Paul Pindars* Eſtates to the value of 138000 l. owing upon Accounts of Bills of Exchange, Moneys lent upon Obligations, and Goods exported out

of

of *England* in Trade of Partners-ſhip, wherein divers great ſumms of Mony were taken up at Intereſt, and imployed in that Trade, and are ſtill ſtanding out and due to divers Orphants and Widdows whoſe Crys have reached the Heavens, and fallen down with Inundations upon their Country, for Juſtice in thoſe Civil matters, wherein the States of *Holland* and *Zealand* protects the Perſons and Eſtates of the Heirs and Executors of the ſaid *Pergens* and *Boudaen* from common Juſtice, under the Pretence of Treaties of Peace and common Alliance between the King and the States General, although they never came under the Conſideration of any publick Treaty, as the ſpoils and depredations of the Ships *Bona Eſperanza* an *Bona Adventura* did. And that which cannot be mentioned without Grief and Aſtoniſhment, is that the Complaints of the oppreſs'd Creditors concerning the civil Cauſes of Actions depending in *Holland* and *Zealand* againſt *Pergens* and *Boudaen* leys before the Secretaries and principal miniſters of State at *Whitehall* for relief, without any effectual Anſwer, although earneſtly ſolicited for many years together.

Recollected by *Th. Smith*, Gen.
June 16th. 1682.

Dormiat aliquando jus ſed moritur nunquam.

A Copy of the Affidavit, made by Mr *Conny* and Mr *Peiſley*, filed in *Chancery*, concerning the *Entry* of the Ships in the *Admiralty*, hereunto annexed.

IN *purſuance of an Agreement in* Writing *Indented, made the Twelveth day of* May, *one Thouſand ſix Hundred ſixty ſix, and in the Eighteenth year of the Reign of Our Sovereign Lord* Charles *the ſecond; Between* George Carew, *Eſq; Adminiſtrator of the Goods and Chattels, Rights, Debts and Credits of Sir* William Courten *and Sir* Paul Pyndar *Knights, (With their Wills annexed) Deceaſed of the one part; And* John Graham *of* Weſtminſter, *Eſq; and* John Brown *of* London *Gent. of the other part, on the behalf of ſeveral Creditors in the* Schedule *to the ſaid* Indenture *annexed.*

Theſe five Ships, *with their* Tackle, Ammunition, Proviſions *and* Men, *are Nominated and Appointed to be entred in the* Admiralty, *in Proſecution of certain* Letters Patents *for* Repriſals *in the ſaid* Indenture *mentioned, and thereunto Annexed to put the ſame in Execution, from time to time, according to this entry, and the* Proviſo's *and Limitations in the ſaid* Letters Patents *contained, until the Debt of* One Hundred Fifty One Thouſand Six Hundred Twelve Pounds, *with all Coſts and Damages ſhall be Recovered and Received, or a Compoſition made for the ſame, as in the ſaid* Letters Patents *is mentioned and expreſſed.*

The Ship *named the* Planter, *of the Burthen of twenty Tuns or thereabouts, four Guns, twenty five Men, Victualled for six Months,* Aaron VVright *Commander, to put the said* Commission *or* Deputation *in Execution, from six Months to six Months, until the Debt of* One Hundred Fifty One Thousand Six Hundred and Twelve Pounds, *with all Costs and Dammages, shall be Recovered or otherwise Composed.*

The Ship *named the* Asia, *burthen one Hundred Tuns or thereabouts, Ten Guns, seventy Men, Captain* Roger Hawkshead, *Commander, Victualled from time to time for the space of three Months every season, until the said Debt of One hundred, fifty one thousand six hundred and twelve Pounds, with Costs and Dammages mentioned in the said* Letters Patents, *shall be recovered or composed.*

The Ship *named the* VVilliam *and* Thomas, *burthen one hundred and fifty Tuns or thereabouts, two hundred Men, twenty five Guns, Victualled for nine Months, Captain* Robert Cambell *Commander, and at the Expirations of nine Months, for nine Monts more; and so at the end of every nine Months to be Victualled* de Novo, *from time to time, for nine Months longer, until the said Debt, Dammages and Costs shall be Recovered and Received, or a composition made with the persons Interested and Injured.*

The Ship *named the* America, *burthen fourscore Tuns or thereabouts, one hundred Men, eight Guns Victualled for six Months, Captain* VVilliam Hawley *Commander, and at the Expiration of the said Term, to Revictual and Equip the said* Ship, *from six months to six months, until the said Debt of* One Hundred Fifty One Thousand Six Hundred & Twelve Pounds, *with Costs and Dammages shall be satisfyed & repay'd.*

The Ship *named the* Affrica, *burthen one hundred and twenty Tons, or thereabouts, one hundred and fifty Men, fifteen Guns, Victualled for 12 months, Captain* Thomas VVood *Commander, to put the said Commission in Execution, as aforesaid, according to the several Conditions, Limitations and* Proviso's *in the said* Letters Patents, *expressly mentioned and contained.*

Unto whom Deputations were immediately given accordingly of the same date, to put the said Letters Patents in Execution at such times and in such parts of the World as they should think most convenient for their Purpose.

THomas Conny, *and* Samuel Peisly *of* London *Gentlemen, make Oath, That they these Deponents, did in Company with* George Carew, *Esq; on the ninth of* September, 1681. *at the request of several persons Interested and Concerned in the Debt of* 151612 *l. mentioned in the* Letters Patents *within Recited; call upon* Thomas Bedford, *Esq; Register of the* Admiralty Court, *at his Office in* Doctors-Commons, *and then and there require of him to make an entry of the five Ships with the number of their Men, Guns, Provisions, Burthens, Commanders Names, and times of Victualling, as they are mentioned and expressed on the other side of this* Affidavit. *whereupon the said* Thomas Bedford, *desired these Deponents to come again the next Morning, and appear with him, before Sir* Richard Lloyd, *Surrogate to the Judg of the said Court, who took the same in his Hand, and after he had perused the Contents thereof, gave these Deponents the said Paper again, in Company of the said* George Carew. *Saying they would not make any other entry, then several Notes they had taken in Writing, and the Names of these Deponents.*

Jurat 10. die *Octobris* Anno Regni Dom. nri *Car.* sec. 33°. Coram me magro in *Canc'.*

Jo. Francklin.

Tho. Conny.
Samuel Peisly.

Ex. *W. Poynter.*

A COPY of the LETTERS-PATENTS *For* Especial Reprisals *granted by the King of* Great Britain, *(under the Great Seal of* ENGLAND*) against the* States General, *and their Subjects, for* 15,1612 l. Sterling, *with Costs and Damages for the Recoverie thereof.*

CHARLES the Second, by the Grace of GOD, King of *England, Scotland, France* and *Ireland*, Defender of the Faith, &c. To all Christian People to whom these Presents shall come, Greeting. Whereas our loving Subject William Courten Esq; deceased, and his Partners, in the year 1643. by the Depredation and Hostile Act of one Geland, Commander in Chief of two Ships belonging to the East-India Company of the Netherlands, was between Goa and Maccao in the Streights of Malacca, deprived and most injuriously spoiled of a certain Ship named the Bona Esperanza, and of her Tackle, Apparel & Furniture, and all the Goods and Lading in her, upon a very hopeful Trading Voyage to China, which were carried to Batavia, and there all de facto, without due Process of Law confiscated: and that also in the said year, another laden Ship of our said Subject, called the Henry Bona Adventura, being come on ground on the Island Mauritius, was there both Ship and Goods seized upon by some of the Officers and Ministers, and others under the Command of the said East-India Company, and utterly deteined from the right Owners. And whereas the said William Courten, and his Assigns in his life-time, used all possible Endeavours to recover the said Ships and Goods, and to procure further Justice against the Malefactors, and yet could obtain no Restitution or Satisfaction, whereby they became to be much distressed and utterly undone in their Estate and Credit: and that thereupon, and upon the most humble Supplication and Addresses of Francis Earl of Shrewsbury, and William Courten Esq; Son and Heir of the said William deceased, Sir John Ayton, and Sir Edmond Turnor Knights, George Carew and Charles Whitaker Esquires, on the behalf of themselves and divers others Interessed in the said two Ships Bona Esperanza and Henry Bona Adventura, and in the Estates of the said William Courten deceased, Sir Edward Littleton Baron: and Sir Paul Pyndar Knight deceased, That We would take their Case into Our Princely consideration. We out of the just sense We then had, and still have of their unjust Sufferings in that Business,

both

both by Our own Letters under our Signe Manual to the States General of the United Provinces, and by Sir George Downing Knight and Bar. Our Envoy Extraordinary, to whom We gave Especial Command so to do, required satisfaction to be made according to the Rules of Justice and the Amity and good Correspondence, which We then desired to conserve with them firm and inviolable: And whereas after several Addresses made to the said States General by our said Envoy, and nothing granted effectuall for Relief of Our said Subjects (whom We take Our Selves in Honour and Justice concerned to be satisfied and repaired) We lately commanded the said Sir George Downing to intimate and signifie to the said States, That We expected their final Answer concerning Satisfaction to be made for the said Ships and Goods by a time then prefixed, and since elapsed, That We might be govern Our selves thereupon, that Our aforesaid Subjects might be relieved according to Right and Justice: And yet no Satisfactory Answer hath been given, so that We cannot but apprehend it to be not only a fruitless Endeavour, but a prejudicing of Our Honour and Dignity, to make further Application, after so many Delayes and Slightings. And whereas John Exton, Doctor of Laws, Judg of Our High Court of Admiralty of England, upon Our Command, to certify to Us the Value of the Losses and Damnages sustained by the said William Courten and Partners, whose Interest is now vested in our loving Subjects, Sir Edmond Turnor Knight and George Carew Esq. and Partners, hath upon full Examination and Proofs thereof made by Witnesses in Our High Court of Admiralty, Reported and certified under his Hand, That the same do amount to the sum of One hundred fifty one Thousand Ly hundred and twelve Pounds.

Now know Ye, That for a full Restitution to be made to them for their Ships, Goods and Merchandizes, of which the said William Courten, and the Assigns of the said William Courten, and Partners, were so despoiled, as aforesaid, with all such Costs and Charges, as they shall be at for Recovery of the same: We by Advice of Our Privy Council have thought fit, and by these Presents do Grant License and Authority under our Great Seal of England, unto Our said Subjects Sir Edmond Turnor and George Carew, their Executors, Administrators and Assigns, for and on the behalf of themselves, and other persons interested as aforesaid, to Equip, Victual, Furnish, and set to Sea, from time to time, such and so many Ships and Pinaces as they shall think fit: Provided always that there be an Entry made and Recorded in the Admiralty Court of the Names of all Ships and Vessels, and of their Burthen and Ammunition, and for how long time they are Victualed: and also of the Name of the Commander thereof, before the same, or any of them be set forth to Sea: and with the said Ships and Pinaces by Force of Arms to set upon, take and apprehend any of the Ships, Goods, Moneys and Merchandizes of the said States General, or any of their Subjects inhabiting within any their Dominions or Territories whatsoever, of any particular Estate within those Provinces, and the Inhabitants thereof; wheresoever the same shall be found, and not in any Port or Harbor of England, and Ireland, unless it be the Ships and Goods of the Parties that did the Wrong: and the said Ships, Goods, Moneys and Merchandizes being so taken and brought into some Port of Our Realm or Dominions, an Inventory thereof shall be taken by Authority of

Our

Our Court of Admiralty, and judgment shall be given in Our Court of Admiralty by the Judg or Judges thereof, for the time being and upon Proof made before him or them, That the same Ships, Goods, Wares, Merchandizes, or Money, did belong to the States General, or any of their Subjects, as aforesaid, That they shall be lawfull Prize to the said Sir Edmond Turnor and George Carew, their Executors, Administrators and Assigns, as aforesaid, to keep and retain in their or any of their Possessions, and to make sale, and dispose thereof in open Market, or howsoever else, to their and every of their best advantage and benefit, in as ample manner, as at any time heretofore hath been accustomed by way of Reprisal, and to have and enjoy the same as lawful Prize, and as their own proper Goods: So that neither the Captain, Master nor any of the Company that shall serve in his own person, or shall promote and advance the said Enterprize in manner and form aforesaid, shall in any manner of wise be reputed or challenged for any Offender against any of Our Laws. And that also it shall be lawful for all manner of Persons, as well Our Subjects as any other, to buy the said Ships, Goods and Merchandizes so taken, and apprehended by the said Captains, Masters and others, and adjudged, as aforesaid, without any Damage, Loss, Hindrance, Trouble, Molestation, or Incumbrance, to befall the said Buyers, or any of them, in as ample and lawful manner, as if the said Ships, Goods, Wares and Merchandize had been come and gotten by the lawful Trafique of Merchants, or of just Prizes in time of open War. Provided always, That all Ships, goods and merchandizes, taken by virtue of this Our Commission shall be kept in safety, and no part of them imbezled, wasted or diminished, nor the Bulk thereof broken, until Judgment have been past, as aforesaid, That they are the Ships and Merchandizes of the States General or some of their Subjects, as aforesaid. And if by Colour of this Our Commission, there shall be taken any Ships, Goods or Merchandizes of any of Our loving Subjects, or the Subjects of any Prince, or State in good League or Amity with Us (except the States General) or their Subjects, as aforesaid; and the Goods therein Laden, sold, imbezled or diminished, or the Bulk thereof broken in any place, before they shall be adjudged to belong to the said States General, or to some of their Subjects, as aforesaid, That then this Commission shall be of no futurient Authority to take the said Ships, Goods and Merchandizes, or to Warrant, and save harmless such as shall receive, buy or Intermeddle therein but that both the Prizes so taken, and the said Ship of War, shall be confiscated to Our Use. And further, We do hereby declare, That it is Our Will and Pleasure, That this Our Commission shall remain in full Force and Power, to all Intents and Purposes until the said Sir *Edmond Turnor* and *George Carew*, their Executors, Administrators and Assigns, as aforesaid, shall by Virtue thereof have by Force of Arms Apprehended, Taken, Seized, Recovered and Receiv'd from the said *States General*, or their Subjects, One hundred fifty one Thousand six hundred and twelve pounds, according to Appraisement to be made by Sufficient Appraisers upon Oath, Nominated and Authorized in our said Court of Admiralty, of all such Ships, Goods, Wares & Merchandizes, as shall be taken from the said *States General*, or any of their Subjects, by Virtue of this Commission, or shall otherwise receive Satisfaction of the Debt aforesaid, by Composition to be made between those of the *East India* Company of the *Netherlands*, and the said Sir *Edmond Turnor* and *George Carew*, their Executors, Administrators and Assigns as aforesaid. ☞ Notwithstanding it may so happen, the present Difference between Us, and the States General depending upon General Reprisals, may be agreed and compo-

sed

'ſed, and that in the Interim a Peace and good Correſpondance may be renewed between Us, 'and the ſaid States General: In which Caſe, Neverthe leſs, it is Our Will and Pleaſure, That 'in the Execution of this Our Commiſſion, no Violence ſhall be done to the Perſons of the ſaid 'Subjects of the States General, but only in Caſe of Reſiſtance; and that after, in cold 'Blood, the ſaid Subjects of the ſaid States General, if hurt or Wounded, ſhall be uſed with 'all convenient Office of Humanity and Kindneſs. ☞ And Further, Our Will and Plea-'ſure is, That although it ſhall happen, That all Hoſtility between Us and the States Gene-'ral, and Our reſpective Subjects ſhall ceaſe, yet this Our Commiſſion ſhall remain, and be 'in full Force and Power, to the ſaid Sr *Edmond Turnor* and *George Carew*, their Executors, Ad-'miniſtrators and Aſſigns, as aforeſaid, by Virtue thereof to apprehend, take and ſeize by 'Force of Arms, ſo many more of the ſaid Ships and Goods of the ſaid States General, or any 'of their ſaid Subjects, as beſides the ſaid Summ before mentioned ſhall countervail, ſatisfie 'and pay all ſuch Coſts and Charges as the ſaid Sir *Edmond Turnor* and *George Carew*, their 'Executors, Adminiſtrators or Aſſigns, as aforeſaid, ſhall from time to time make proof to 'have diſburſt and paid towards the Equipping, Manning, Paying, Furniſhing and Victualing 'of the ſaid Ships, ſo licenſed and authorized, as aforeſaid, by this our ſaid Commiſſion, to be 'Equipped, Manned, Payed, Furniſhed or Victualed by the ſaid Sir *Edmond Turnor* and '*George Carew*, their Executors, Adminiſtrators and Aſſigns, as aforeſaid, for the Purpoſe 'aforeſaid. And Our Will and Pleaſure is, and We do hereby require Our Judge or Judges of Our High Court of Admiralty, for the time being, and all other Officers of the Admiralty, and all other our Judge or Judges, Officers, Miniſters and ſubjects whatſoever, to be aiding and aſſiſting to the ſaid Sir *Edmond Turnor* and *George Carew*, their Executors, Adminiſtrators and Aſſigns as aforeſaid, in all points in the due Execution of this Our Royal Commiſſion, and to proceed to Adjudication, and to adjudge all Ships, Merchandizes, Moneys and Goods by Virtue thereof to be taken and proved to belong to the ſaid States General or any of their ſubjects, to be Lawful Prize to the ſaid Sir *Edmond Turnor* and *George Carew*, their Executors, Adminiſtrators or Aſſigns, as aforeſaid, according to Our Princely Intention, hereby ſignified and expreſſed, and to take Care that this Our Royall Commiſſion be duely executed, and favourably Interpreted and Conſtrued in all reſpects, to the Benefit and beſt Advantage of the ſaid Sir *Edmond Turnor* and *George Carew*, their Executors, Adminiſtrators and Aſſigns, as aforeſaid. In Witneſs whereof, We have cauſed theſe Our Letters to be made Patents. Witneſs Our ſelf at Weſtminſter the 19 day of May, in the 17 Year of Our Reign.

Per ipſum Regem.

Barker.

Nota, *That there is due to the Eſtates of* Sir William Courten *and Sir* Paul Pindar *the Summ of* Two hundred Thouſand Pounds *ſterling and upwards from the Crown of* England, *for Moneys lent to the late King upon ſeveral Branches of the Revenue, before the year* 1640. *towards the ordinary Charge of the Crown, the greateſt part of the ſaid Money being taken up at Intereſt, and ſtill ſtanding out, and due to ſeveral Orphans and Widows who claim their proportionable Shares of the Debt and Dammages mentioned in the Letters Patents aforeſaid.*

Memorandum.

THat *King* Charles *the First, found it neceſſary to put Sir* William Courten, *and his Partners, upon Trading Voyages to the* Eaſt-Indies, China *and* Japan, *unto whom he gave a* Charter *under the great Seal of* England, *for the proſecution thereof in the Year* 1635.

That his ſaid Majeſty incouraged Sir Paul Pindar, *and others, to advance divers great Sums of Money, as Adventurers in that Expedition and Enterprize.*

That Sir Edward Littleton, *and others Intereſſed before the Kings moſt happy Reſtoration (being under the Notion of Delinquents and Sequeſtration) durſt not appear openly againſt the States and their Subjects for Common Juſtice, concerning ſatisfaction and reparation for the Spoyles and Depredations.*

That Sir William Courten *and Sir* Paul Pindar, *ſtrained their Credits ſo far by borrowing ſeveral great Sums of Money, both of Natives and Strangers to carry on this affair, That there is not a* County *nor* Corporation *in* England; *Wherein there are not either Original Creditors, or their Relations at this time Complaining for their Debts.*

It is inconſiſtent with the Honour and Intereſt of the King, and Kingdom, (under all the Circumſtances attending this Caſe) to let the Hiſtory of ſuch Oppreſſion remain upon Record, when the Creditors have made their humble Propoſals to his Majeſty, that Lyes before the Lords Commiſſioners of the Treaſury, *and Mr.* Secretary Jenkins *for relief upon eaſie Terms, even out of the Foundations that Sir* William Courten, *and Sir* Paul Pindar *laid.*

The Royal Word of a KING *being paſt, and confirmed under his* Great Seal, *That his Grant ſhould not be Obliterated, until Satisfaction and Reparation to the Grantees in this Caſe; there ought to be an Inquiry made, Whether the Parties Grieved be Satisfied and Repaired, and alſo that they may be duly heard, before this Grant be any ways called in, by Miniſters or Officers of State, to be Cancelled and made Null. It being repugnant to the Laws of God, the Laws of Nature, the Statutes of this Realm, and even againſt the Laws of Common Humanity, that a particular Intereſt (ſo aſcertained and ſecured) ſhould be taken away from Private perſons for a Common Good, and not be Satisfyed and Repaired, either out of the Publick Purſe, or ſuffered to Repriſe their Satisfaction and Reparation, for the Wrongs and Injuries done them, by the Subjects of* Holland *and* Zealand, *without the Danger of being Hanged as* Pyrates *and* Felons, *for asking their OWN.*

Three Humble Proposals of the Creditors of Sir William Courten, *Sir* Paul Pyndar, William Courten *Esq*; *and* David Goubard; *Humbly offered to the* KING.

That in consideration of the Debt and Damages of 151612 l. contracted by the Spoils and Depredations upon the Ships, Goods, and Factories of Sir William Courten, Sir Paul Pyndar, and their Partners, in the East-Indies; for which Letters Patents for Reprizals were granted under the Great Seal of England, to continue effectual in the Law, until the said sum of 151612 l. with Costs and Damages, should be recovered and received; which is become a Debt incumbent upon the Crown, if His Majesty undertakes to Indempnifie and discharge the States-General and their Subjects concerning the same.

I. It is therefore humbly proposed, That His Majesty should, in lieu thereof, grant and assign the 4 and ½ *per cent*, arising out of the *Barbadoes*, and the *Careebe Islands*, and the waste Lands there, to certain Trustees, for the use and benefit of *William Courten*, Grand-child and Heir of Sir *William Courten*, and the Creditors of his Father and Grand-father, who were the Original Proprietors of the Island of *Barbadoes*, whereof they were dispoiled by *James*, late Earl of *Carlisle*, and his Adherents; to the insupportable Damages of Sir *William Courten*, his Family, and Creditors.

That in Contemplation of Sir Paul Pyndar's great Services and Sufferings for the Crown of England; and more particularly, for the vast sums of Money lent to the late King, Charles I. amounting to the sum of One hundred and thirty thousand Pounds, upon the Allom-Farm, Sugar-Farm, Collectors of the Papists Compositions in the Northern Counties, and other Branches of the Revenue; which were diverted in the late troublesom Times to other uses, leaving Sir Paul Pyndar's Assignments unsatisfied, and many of his Creditors undone.

II. It is therefore humbly proposed, That there may be a Privy-Seal granted for Fifty thousand Pounds upon the Reference from His Majesty, that lies before the Lords Commissioners of the Treasury to be raised out of the said Papists Estates (at the instance and Petition of *Richard Powel* Esq; and *Nathaniel Hill* Gent.) upon their old Compositions in the eleven Northern Counties, as they paid under the Collection of *Thomas*, Viscount *Wentworth*, in the year 1638. which they are willing now to satisfie accordingly.

That

That whereas there are divers great Debts and Sums of Money owing, and resting in the hands and possessions of the Sons, Heirs and Executors of Jacob Pergens of Amsterdam, and Peter Boudaen of Middleburgh in Zealand, that belongs to the Estates of Sir William Courten and Sir Paul Pyndar, upon Bills of Exchange, Obligations for Money lent, and private Contracts in Trade and Merchandizing, amounting to the sum of One hundred and twenty thousand Pounds, and upwards: Whereupon there are Actions depending in the ordinary Courts of Judicature in Holland and Zealand, ready for Sentences and final Decrees; wherein Justice is positively denyed, upon vain pretences of extinguishments and mollifications by Treaties of common Amity and Alliance.

III. It is most humbly proposed, That His Majesty would be graciously pleased effectually to recommend the Petition of the Creditors, that lies before the Lord *Conaway* to that purpose, for speedy satisfaction to be made therein, for relief of His most Oppressed Subjects.

POSTSCRIPT.

KInd Reader, before you come to peruse the Answer to the Lord Chancellor's Arguments, when his Lordship gave that hasty Judgment for the King, upon the Scire facias, *and Pleadings relating to the Letters Patents for Reprizals, without hearing* Counsel *of the other side: It's necessary that you should first read the Abstract of the* Scire facias, *brought by Sir* Robert Sawyer, *His Majesty's Attorney-General, and the* Plea *thereunto: The* Demurrer, *and* Rejoynder *thereupon, being things of form and course, to bring the whole matter in Issue, are omitted herein, for Brevity-sake. The Plea being filed in* Easter-*Term* 1681. *lay dormant until* Easter-*Term* 1682. *Then the Demurrer was brought in generally that the Plea was not sufficient in Law,* &c. *Whereupon the Defendents persisting in their Rejoynder that it was, the Record was made up and read in Court accordingly*

An Abstract of the *Scire facias* (returned into the Pety-Bag-Office) rendred out of *Latine* into *English*.

CHARLES *the second, by the Grace of God of* England, Scotland, France *and* Ireland *King,* &c. *To the Sheriff of* Middlesex, *greeting. Whereas by our Letters Patents under Our Great Seal, dated the* 29th. *of* May, *in the* 17th. *year of Our Reign, for restitution to be made to* Charles *then Earl of* Shrewsbury, *and others, for certain Ships, Goods and Merchandizes therein mentioned, that were unjustly taken and detained from them by the Subjects of the* States-General *of the* United Provinces. *We gave License and Authority to Sir* Edmond Turnor *Knight, and* George Carew *Esq; their Executors, Administrators and Assigns, on the behalf of themselves and others, to set forth several Ships and Barques to Sea, from time to time to take and seize the Ships, Goods and Merchandizes of the said States,*

States, and their Subjects; and to detain and keep the ſame, as lawful Prize, until the ſaid Turnor *and* Carew *ſhall have recovered the Money in the ſaid Letters Patents mentioned, with their Coſts and Damages, as by the ſaid Letters Patents (with the ſpecial Clauſes and Proviſoes therein contained) may appear; With this, that by Articles of Peace and Amity between Us and the ſaid* States-General *at* Breda, July 21. 1667. *in the* 19th *year of Our Reign, and ratified under Our Great Seal* Aug. 24. *following: It was agreed and concluded, that all Letters of Reprizals, Marque, and Counter-marque, general and ſpecial, ſhould be inhibited and revoked; ſo that the Subjects of either Party ſhould not exerciſe any Hoſtility or Violence afterwards, upon any pretext or colour whatſoever; And by other Articles of Peace and Amity between Us and the ſaid* States, *concluded at* Weſtminſter, Febr. 9. *in the* 26th. *year of Our Reign, and ratified under Our Great Seal on the* 28th. *of the ſame month, and proclaimed accordingly, that the Treaty made at* Breda *was renewed and confirmed; And that further by Our Letters Patents, dated* June 6. *in the* 32d. *year of Our Reign, We had ſuperſeded, revoked and made null and void the ſaid Letters Patents, bearing date* May 19. *in the* 17th. *year of Our Reign, as aforeſaid; And that all and every the Powers, Authorities, Clauſes, Commiſſions, Grants and Licenſes in the ſaid Letters Patents confirmed to the ſaid* Turnor *and* Carew, *were thereby made null and void, and of no effect in the Law. Wherefore, to the end that the Treaties of Peace and Amity between Us and the States, might be kept firm, and that a further remedy might be provided for that purpoſe: We command you, by good and lawful men of your Bailywick, to ſummon the ſaid Sir* Edmond Turnor *and* George Carew *to be and appear before Us, in Our High-Court of* Chancery 15 *days after* Eaſter, *to ſhew cauſe, if they can, why the Letters Patents aforeſaid ſhould not be brought into* Chancery, *and the Enrollment thereof cancelled, and made null, and void. Witneſs Our Self at* Weſtminſter, *the* 12th. *day of* February, *in the* 33d. *year of Our Reign.*

By virtue of which Writ, the ſaid Sir *Edmond Turnor* and *George Carew* being ſummoned, and the ſaid Writ returned by *Slingsby Bethel* and *Henry Corniſh*, Eſqs; Sheriffs, they appeared and pleaded in *Eaſter-Term* accordingly, as follows.

An Abſtract of the *Plea* filed in the *Pety-Bag*-Office, in *Eaſter-Term*, 1681.

THe aforeſaid Sir *Edmond Turnor* and *George Carew*, by *Matthew Pyndar* Eſq; their Attorney, comes and defends the force and injury, *&c.* craving *Oyer* of the Letters Patents, and pleaded the ſame *in hac verba*; *Charles* II. *by the Grace of God*, &c. which being read, they ſaid, that the Letters Patents ought not to be brought into *Chancery*, nor the Enrollment thereof obliterated, and made null or void; becauſe King *Charles* I. by his Letters Patents under the Great Seal of *England*, in the year 1635 gave Sir *William Courten* and his Partners a Charter to Trade and ſettle Factories in the *Eaſt-Indies*, *China* and *Japan*, for Trading Voyages; and renewed the ſame to *William Courten*, Son and Heir of Sir *William*, and his Partners. And that Sir *Paul Pyndar* had furniſh'd Sir *William Courten* with Thirty five thouſand Pounds, towards the firſt enterprize of that Trade. And that the ſaid *William Courten* the Son, and his Partners, had ſet forth the two Ships named the *Bona Eſperanza*, and *Henry Bona Adventura*, (in the Patent for Reprizals mentioned) in the year 1641. with Moneys, Goods and Merchandizes, for ſupply of the ſaid Factories and Trade; whereof ſeven parts belonged to *Courten*, and the 8*th.* part to his Partners. And that *William Courten* the Son, by his Indenture, dated 26 *April* 1642. had transferred and aſſigned his Intereſt in the ſaid Ships and Merchandizes

dixes to Sir *Edward Littleton*, in the County of *Staffard*, Baronet, for Counter-security against ſeveral Debts contracted by Sir *Wil. Courten* and his Son, wherein he ſtood obliged for payment thereof. And that Sir *Edward Littleton*, joyntly with *Wil. Courten* the Son, had by their Indenture dated *Decemb.* 19. 1642. transferred and aſſigned all their Intereſt in the ſaid Ships, *Bona Eſperanza* and *Henry Bona Adventura*, to Sir *Paul Pyndar*, towards his Debt, and the ſurplus to the Creditors of *Courten* and *Littleton*. And the ſaid *Turnor* and *Carew* further ſay, that the Officers of the *Eaſt-India*-Company of the *Netherlands* in the year 1643. unjuſtly ſeized and detained the ſaid two Ships and Lading, and converted the ſame to their own uſe, without any legal Proceſs, contrary to the Laws of Nations, and the Laws and Statutes of this Realm; which was proved by the Teſtimonies of ſeveral Witneſſes in due form of Law taken. And that the ſaid *Eaſt-India*-Company, and the States of the *Netherlands*, had altogether denied to make any ſatisfaction or reparation to the ſaid Proprietors for the ſaid Spoils and Depredations. Afterwards, *Wil. Courten* Eſq. the Son and Executor of Sir *Wil. Courten*, died Inteſtate, in the year 1655. And *William Tooms*, Executor of Sir *Paul Pyndar*, in the ſame year alſo died Inteſtate; And that Letters of Adminiſtration of the Goods and Chattels of Sir *Paul Pyndar*, with his Will annexed unadminiſtred, was in due form of Law granted to Sir *William Powel* Baronet; and Letters of Adminiſtration of the Goods and Chattels of Sir *Will. Courten*, with his Will annexed, unadminiſtred, was likewiſe in due form of Law, granted to the ſaid *George Carew*, who (*bona fide*) paid and ſatisfied the ſaid Sir *Will. Powel*, *John Whitfield*, Eſq; and others, the ſum of 3000 *l. ſterling*, in ſatisfaction of their Debts, upon account of Sir *Paul Pyndar*, out of the ſaid *Carew's* proper Money; whereupon Sir *Will. Powel* by agreement having relinquiſhed the Adminiſtration, Letters of Adminiſtration, with Sir *Paul Pyndar's* Will annexed, was in due form of Law granted to the ſaid *George Carew*. Then the ſaid *Francis* Earl of *Shrewsbury*, Sir *John Ayton*, and others, humbly ſupplicated His Majeſty, on the behalf of themſelves and others intereſſed, to require the *States-General* to make ſatisfaction and reparation for the ſaid Spoils and Depredations, as in the ſaid Letters Patents at large appears; but no reſtitution or reparation could be obtained; Whereupon the ſaid Letters Patents were granted for the recovery of 15612 *l.* with Coſts and Damages, under thoſe conditions and limitations therein expreſſed. And the ſaid *Turnor* and *Carew* further ſay, that they are entituled, and legally veſted with an Intereſt, and inviolable right to recover and receive the ſaid Money, according to the Laws of Nations, and the Laws and Statutes of *England*, and the very expreſs grants and intentions in the Letters Patents contained accordingly; notwithſtanding any War or Wars, or the ſuppoſed Treaty at *Breda*, or any other Treaties whatſoever, between His Majeſty and the *States-General*, or the pretended *Superſedeas* in the *Scire facias* mentioned. The ſaid *Turnor* and *Carew* in fact ſaying, that they, or either of them, or any claiming under them, or either of them, have not to this day received, taken or ſeized from the *States-General*, or their Subjects, or the *Eaſt-India*-Company of the *Netherlands*, the ſaid ſum of 15612 *l.* or any part thereof, or any part of the 800000 *Pattacoons*, mentioned in the 10*th.* Article of the laſt Treaty at *Weſtminſter*, mentioned in the ſaid *Scire facias*; or half the Charges and Expences occaſioned thereby. Wherefore, the Letters Patents ought not to be brought into *Chancery*, or the enrollment thereof cancelled, or made null and void; for that the King was not deceived in His Grant.

Signed by *Richard Wallap*, *Richard Powell*, *Edmond Saunders*, *Charles Molloy*, *John Somers*.

THe Record being made up, and brought into Court on the 26th. of *May* 1682. the Attorney-General and the Solicitor both moved for Judgment, without any other Argument for it, than pretended Reason of State. Whereupon the Councel for the Defendants moved, that it was against the practice of all Courts in *Westminster-hall*, to argue the same Term the Record was brought in, or without a *Consillium*, and a convenient time appointed to study and argue the points in Issue; especially in a matter of this weight and consequence, being a noble Case to be debated and argued, both in point of Law and State; and therefore desired a longer day; whereupon the Lord Chancellor stood up, and said, If they were not ready to argue, he was ready to give Judgment; and that they might *argue by the Spirit*, if they would. So his Lordship informing the Court that he had studied the Case himself; And for the satisfaction of all man-kind (*as he said*) gave these Arguments following, which were taken in writing by several Councellors at Bar.

The Lord Chancellor's Arguments.

THe Statute of 31 H. 6. cap. 4. *gives Admiral Jurisdiction to the Court of* Chancery *for speedy relief in cases where strangers are robbed at Sea by the King's Subjects.*

And that, after a Peace concluded, Letters of Marque (for Reason of State) are totally extinguished.

These Letters Patents, *especially being granted when this Kingdom and the* Hollanders *were in a state of Enmity, (they appearing to bear date the* 19th. *of* May, 1665. *in the heat of the War) are therefore disannulled by the subsequent Peace.*

A Safe Conduct *granted by the King, superseded* Letters of Marque, *as appears,* 11 H. 4. N. 66. *by Judgment of the Parliament of* Paris, *and the Parliament of* Montpellier, 2 H. 5. N. 34.

A Truce between Nations that have been at Enmity, supersedes Letters of Marque, *as appears,* 11 H. 6. N. 34. Parl. Rot.

A fortiori, *A Peace, after Proclamation thereof, and a* Supersedeas *under the Great Seal, will abolish and extinguish* Letters of Marque; *and that for the Reason aforesaid; The King having the Power of Peace and War.*

Mr. Carew *cannot be a good Subject, to involve the Publique, by executing these* Letters of Marque *in times of Peace; who (as I am informed) had* 30 Ships out *in time of War.*

And the Clauses contained in the Patent, *that no Peace shall extend to the prejudice of the said* Letters Patents, *before satisfaction, was a Clause unusual, and incerted by surprize, and ought not to have been, and is in no sort obligatory.*

Wherefore, I give Judgment, That the Letters Patents *shall be brought into Court, to be cancelled, and the Enrollment thereof razed.* A

☞ The *Argument* turns upon his Lordship; the King being sole *Legislator* of *Peace* and *War*. The Clause of continuance in the *Patent*, hath the force of an *Act of Parliament*

His Lordship would be both Judge and Party, (and sole Arbiter) if a *Writ of Error* did not lie in the *Kings-Bench*, and finally in *Parliament*, to reverse his *Erroneous Judgment*.

A Copy of the Order in Chancery.

Lord Chancellor.

Veneris, 26 die *Maii*, Anno Regni *Caroli* ſecund' Regis triceſimo quarto. Inter Dom' Regem Quer', Edmund' Turnor Mil' & Georg' Carew Ar' Defend'.

The Record of the Demurrer joyned in the Pety-Bag upon a Scire facias brought by Mr. Attorney-General on the behalf of His Majeſty, for revoking certain Letters of Reprizal granted to the Defendents the 19th. of May 1665. coming this preſent day to be argued before the Right Honourable the Lord High-Chancellor of England, by vertue of an Order of the 20th. inſtant, at which time the Record was read: The Defendents Counſel deſired longer time; But, upon hearing of Mr. Attorney-General on the behalf of the King, his Lordſhip declared, that the matter in debate did concern the Publick, and could not admit of any further day to be given to the Defendents. And his Lordſhip having been attended with the Record, and duly conſidered the whole matter, is of opinion, and doth order, That the ſaid Demurrer do ſtand; and that Judgment be entred up for the King, for the revoking the ſaid Letters Patents; and doth further order, That the Enrollment thereof be vacated upon Record, and that the Defendants do forthwith bring into this Court the ſaid Letters Patents, and all Exemplifications and Duplicates thereof, under Seal to be cancelled.

Ex.

Per *George Edwards*,
Deput' Regiſter.

On the next morning the Lord Chancellor was pleaſed in open Court to give order, that the Attorney-General ſhould be careful in drawing up the Judgment; and that the Clerk of the Pety-Bag ſhould enter it upon the Roll, and exemplifie the whole Record, under the Great Seal, and ſend it to the Admiralty-Court, to remain there.

It may be obſerved, That the *Scire facias* being returned in *Eaſter*-Term 1681. and the *Plea* filed of the ſame Term, and the *Demurrer* coming in not before *Eaſter* Term laſt: the Attorney-General had a whole year to conſider of the ſaid *Plea*, which is admitted as to the matters of Fact in all particulars by the ſaid *Demurrer*, and ſince ſworn to be true by one of the Defendants: So that the Attorney-General making no Reply, inſiſted only upon the Law. The Queſtions therefore that do naturally ariſe upon it, are, Whether the *Scire facias* be a Legal and warrantable Writ in this Caſe for the Lord Chancellor to ground his Judgment upon, for repealing the Letters Patents, (without ſatisfaction) ſo ſolemnly obtained under the Great Seal of *England*, according

according to the Laws of the Land? or, Whether the *Plea* be not ſufficient in Law to ſupport and maintain the Letters Patents, until the Debt and Damages be recovered?

But before we come to anſwer the Lord Chancellor's Arguments, it's abſolutely neceſſary to ſpeak a word or two concerning the *Scire facias*, and the Order entred by the Regiſter, that the Defendents ſhould bring the Letters Patents, and all Exemplifications and Duplicates thereof, under Seal into Court, to be cancelled.

It's recited in the Record made up, *pro reſtitut' faciend'* Carolo *tunc Comiti* Salop, *& al' in eiſdem Literis Patent'* &c. whereas there is no ſuch Patent as is mentioned in the *Scire facias*. Notwithſtanding, it's affirmed in the ſaid Order of the 26*th*. of *May* 1682. That his Lordſhip had been attended with the Record, and duly conſidered the whole matter; and yet in the ſecond Line of the ſaid Record it's written, *Carolo tunc Comitis Salop*; whereas in the Letters Patents for Reprizals it's mentioned for reſtitution to be made to *Francis* Earl of *Shrewsbury*, and others; So that the Foundation being bad, the Structure muſt fall to the Ground: there being no ſuch Patent as the *Scire fac'* recites. Whereupon a *Diſtringas* is ſince iſſued forth to the Sheriff of *Mid.* to diſtrain all the Lands and Tenements of *George Carew* within his Bayliwick, until the ſaid Patent, Exemplifications and Duplicates thereof, under Seal, be brought into Court, and cancelled; which is impoſſible for him to do, being out of his power; the ſaid Duplicates and Exemplifications being in the hands of ſeveral Perſons beyond the Seas, with Aſſignments and Covenants that they ſhall continue effectual in Law, until the Debt of 151612 *l.* with Damages, ſhall be recovered and received, according to the words of the Grant, and the King's Declaration. Wherefore, it would be both Honourable and Juſt for any Miniſters of State in *England* or *Holland*, to bring the *Scire facias* in one hand, and Money to ſatisfie the Debt and Damages in the other; And without that *Quid pro quo*, (under his Lordſhip's favour) the Patent cannot be legally revoked, repealed, or made void.

Yet for ſatisfaction of all Mankind, that the Defendents will abide by their *Plea*, they have retained their Councel to give modeſt Anſwers to the Lord Chancellor's Arguments, as followeth; who holds it convenient to begin at the root, where his Lordſhip ended.

That the Clauſe of continuance was unuſual, and incerted by ſurprize, and ought not to have been, and is in no ſort obligatory.

1. The ſtipulation for extinguiſhing all other Loſſes and Damages by the Treaty 1662. from the like Sovereign Remedies. 2. The States denyal of making ſatisfaction for the Spoils and Depredations of thoſe two Ships, according to the ſaid ſtipulation. 3. The Services and Sufferings of *Courten* and *Pyndar* for the Crown of *England*, ſo eminently known to all Parts of the World 4. And the great Supplies given to His Majeſty in Parliament, for the Protection of His Subjects at the very time the ſaid Patent for Reprizals was paſſing through Sir *Heneage Finch's* Office, when he was Solicitor-General, (upon the Negotiation of Mr. *Gilbert Crouch*) were four invincible Arguments for

for the King to paſs this Grant of common Right, to his Subjects, with thoſe two Clauſes of a *continuando* until the Debt 151612 *l.* with Coſts and Damages, ſhould be recovered and received; the King having declared ſo much in his Speech to both Houſes of Parliament, and expreſſed in the very body of the Patent, (in theſe words) **For relief of Our ſaid Subjects, whom We take Our ſelves in Honour and Juſtice concernd to be ſatisfied and re-paid.** So that the King declares Himſelf equally Great and Juſt. Therefore, neither ſurprized nor deceived in this Grant of Reprizals, that had paſſed the Teſt of all the chief Officers of State and Truſt in the Kingdom, whoſe Judgments are Arraigned, by queſtioning the validity of the ſaid Grant.

The reaſons are very obvious to all Mankind, that the Patent ought to be ſo worded, *until the Debt and Damages ſhall be recovered and received*; for that there is no other remedy for the Subjects relief, but ſuch Grants, grounded upon the Law of *Marque*, after Juſtice denied in the Caſe of a Spoil.

This Clauſe of continuance diſtinguiſheth between general and particular Reprizals; the one being an Act of War, the other a Proceſs at Law, and out of the King's Power to obſtruct the reſtitution of this Debt and Damages to the perſons intereſſed, and injured otherwiſe the remedy would prove a Grievance, after ſuch vaſt Expences in aſcertaining the Debt and Damages according to the Rules of Law, if the Grant ſhould not be obligatory.

It is in the Power of the States of *Holland*, or the King, to ſatisfie this Debt and Damages, to make good the King's own words, and preſerve His Honour and Juſtice entire, which ought to be kept Sacred and Inviolable; And if the King cannot pardon the leaſt Treſpaſs, when ſued for reparation in the ordinary Courſe of Law: *à fortiori*, He cannot pardon a Spoil after a Judicial Grant to recover it according to the Laws and Statutes of the Realm.

General Letters of *Marque*, in time of War, are ambulatory, and revokable at Pleaſure, being uſually granted to all perſons in all Nations that will ask for the ſame, to weaken the Enemy; as they did at *Oaſt-End*, *Dunkirk*, *Fluſhen* and *Diep*, in the times of War between *Spain* and *England*, *France* and *England*, and *Holland* and *England*; and thoſe are called *Privatters*, or *Private men of War*, of whom the Lord High-Admiral hath a tenth part of all Prizes; And theſe are the Letters of *Marque* the Lord Chancellor ſo often mentions in his Arguments; whereof there are hundreds of Precedents in the Courts of Admiralty in *England*, *Holland*, *France* and *Spain*; which are Temporary Grants, and determinable at Pleaſure, or certain days prefixt under the Seal of the Admiralty.

By the ſacred preſcriptions in Holy Writ, reſtitution is to be made double the value of the property injuriouſly taken, which implies the Charge of Proſecution; and if the Treſpaſſer, be not able to ſatisfie, he ſhall be Sold for his Theft, or kept for a Ranſom: Upon this ground the old Writs in the Regiſter, and *F. N. B.* were made, and our Anceſtors were ſo careful for the preſervation of every *Engliſh-mans* Right and Property, and the encouragement of Navigation and Commerce; That Merchants Strangers reſident in *England*, and their Goods were Arreſted by thoſe Writs, for ſatisfaction of Injuries done at Sea by the People of that Kingdom or Nation, that did the wrong, whereof they were *Subjects*.

But upon the Petition of the Merchants, Staplers, and others to the Parliament, in the 27*th*. of *Edw.* 3. *c.* 17. The force of thoſe Writs were taken away, and it was ordained

n'd and Enacted by the ſame Parliament, That all Perſons Spoyled at Sea, ſhall have the Law of *Marque*, without fraud or deceipt, that is of taking the value of the Loſs and Damage again.

Bracton Says, *Quod nihil aliud poteſt Rex in terris cum ſit Miniſter Dei, & Vicarius ; quam ſolum quod de jure poteſt.* Every Man hath a Right to Juſtice; and every Subject of *England* having a Fundamental property in his Goods, and a Fundamental liberty of his Perſon. It is repugnant to the Laws of God, Religion and Property, to take away our Goods (for reaſon of *State*) without price or ſatisfaction: he is not a Subject, but a Slave that ſuffers his Subſtance to be taken from him againſt his Will Infinite are the Arguments that may be uſed, and deduced from the Law of Reaſon and Natural Juſtice, in the vindication of this Patent: However, its neceſſary to anſwer the Lord Chancellour *Gradatim* to his Arguments, aforeſaid.

His Lordſhip was pleaſed to ſay, *That the Chancery had an Admiral Juriſdiction, by the Statute* 31. Hen. 6. cap. 4. *for the ſpeedy relief of Strangers Robbed at Sea, by the Kings Subjects.*

His Lordſhip would here beg the queſtion, and have all Mankind to take it for granted, That thoſe who Act under this His Majeſties Royal Charter and Authority, are *Robbers* and *Theeves:* Notwithſtanding the expreſs words in the Patent, That it ſhall be lawful for them to recover the ſaid Debt and Damages, although a Peace for General Reprizals (concerning the Dominion of the Sea) ſhould be concluded.

Its true, the ſaid Statute of *Hen* 6. provides a remedy for thoſe that have ſafe Conduct, and are Robbed by the Kings Subjects. The Lord Chancellour calling to him, any of the Judges of either Bench, who upon Bill of Complaint, ſhall cauſe Reſtitution to be made of Ships and Goods to the parties grieved. This Statute may be ſtill in Force, but not practicable, ſince the Odious and Arbitrary power of the Admiralty Court was taken away by the Statute of *Hen.* 8. in the 28*th.* year of his Reign, for Tryal of Piracy by Jurors, according to the courſe of the Common Law. However the Statute of *Hen.* 6. recited by his Lordſhip, comes not to this caſe upon the *Scire Facias.*

But its enacted and ordained, by the Statute made in the 20*th.* year of *Hen.* 6. *cap.* 1. And ſeveral other Statutes of this Realm: That all Letters of ſafe Conduct, Treaties and Leagues of Amity and Alliance, ſhall be Inrolled of Record in Chancery, or elſe not to be of any Force or Effect in the Law.

And the Treaty at *Breda* being not Inrolled, or made any matter of Record in Chancery, whereby the Kings Subjects might have recourſe thereunto; cannot any ways affect this grant to *Turnor* and *Carew*: And many proper Officers have loſt their Heads in former ages, for their miſcarriages, not inrolling in due time ſuch publick Treaties, Leagues and Alliances.

Its alſo true as the Lord Chancellour obſerves, the Letters Patents to *Turnor* and *Carew*, were granted in time of War, (for an injury done to private Perſons in time of peace,) but provided that no Subſequent peace ſhonld affect it, without a recovery or ſatisfaction to be made for the Debt and Damages: either by force of the Grant, or Compoſition made with the Perſons intereſſed. The *Fiat* paſſed in the month of

May

May 1665. But the proceedings that brought it to that concluſion, continued *de die in diem*, ever ſince the Treaty of Alliance, made in the year 1662. Wherein it was concluded and agreed, That the ſaid Debt and Damages ſo aſſertained and Liquidated ſhould be ſatisfied and repayed.

Yet admitting this Treaty at *Breda* concluded upon the ſurprize of *Chattam*, had been duly Inrolled, and made a matter of Record in Chancery: It was afterwards cancelled, diſanulled, and openly extinguiſhed by Proclamation, in the year 1672. And particularly ſignified to His Majeſty by a report, upon a reference to five Lords of the Council Table, concerning the Debt and Damages mentioned in the Letters Patents aforeſaid; In theſe words, *That the* States General *having wholly cancelled all paſt Treaties and Agreements, and left your Majeſty and your Subjects as free in all Juſtice and Equity, as if they never had been made: We therefore humbly preſume to report our Opinions to your Majeſty, that it is now but juſt and ſeaſonable for your Majeſty, to inſiſt upon reparation for the Debt and Damages aforeſaid*: This reference was made to the Lord *Arlington*, Lord *Aſhley*, Sir *Thomas Clifford*, Sir *John Trevor*, and Sir *John Duncomb*, by Order of Council 22. of *March* 1671. Now whether a Treaty never Inrolled, and afterwards Cancelled by Order of Council, and Proclamation ſhould be properly inſiſted upon, in any Judicial Writs, is fit for another Court of Judicature, or Parliament to reſolve.

It's granted, that after a peace concluded, all Temporary Letters of *Marque* having a bare Authority in themſelves, are for reaſons of *State* totally Extinguiſhed, in regard thoſe Letters of *Marque* had not an Authority coupled with an Intereſt.

A general Letter of *Marque* or *Reprizal*, as before it's ſaid, is an Act of War; A particular or Eſpecial one is a proceſs at Law, which is our caſe.

Letters of ſafe conduct, uſually granted to Foreign Ambaſſadors, and other Perſons: Upon Emergent occaſions are in the nature of a *Superſedeas* to any Commander (that hath a Commiſſion or general Letter of *Marque*) or Privateer, ſo properly called as before; nor ſhall they be interrupted by any Perſon that hath a ſpeciall Commiſſion grounded upon the *Law* of *Marque*; and this is conſonant to reaſon of State, and the *Law* of Nations.

And it is not denyed but that a Truce between Enemies ſuperſedes all Temporary Letters of Marque, being Acts of War, but not ſpecial Letters of *Marque* or *Repriſals* which take their riſe from Spoyls & Depredations committed in times of Peace upon particular men or Companies, that becomes a perſonal injury. And the reaſon is plain, for that the Law of *Marque* and Grants thereupon, are conſiſtent with times of Peace, and the ſtricteſt Amity and Alliance, between Sovereign Princes and States. Captions thereupon being in the nature of Seizures in a hundred for a Robbery upon a private perſon before Sun-ſet, which comes to a common Average to prevent a failer of Juſtice.

It's obſerved that Sovereign Princes holds the Scepter in one hand and the Globe in the other. The Sword is carried before them by ſome Chief Miniſter of State, to ſhew that Juſtice is to be duely Adminiſtred by Officers that are accomptable for their miſcarriages; By the Law of *England*, the King can do no wrong. He is obliged by Oath to protect His Subjects in their Rights, Properties and Eſtates; Therefore His Miniſters cannot take them away.

Yet no man of ſence will denie, but that the King for a publick good may by due means and ways make void even the Letters Patents, in this caſe of Repriſal, that is

to

to ſay (as it's obſerved before) with Money in the right hand of a Lord Treaſurer, Dutch Embaſſador, or Lord Chancellor, and the *Scire-facias* in the left hand, for the Grantees to ſhew cauſe (the Money being payed) why they ſhould not bring the Letters Patents into Court to be Cancel'd.

Treaties of State if they be repugnant to the Law of God, the Law of Reaſon, or the Laws and Statutes of *England* (*ipſo Facto*,) they are void in themſelves; The third Article of the pretended Treaty at *Breda*, concluded in the year 1667. after the Surprize at *Chatham*, ſays that all Offences, Injuries, Damages and Loſſes ſuſtained on either ſide by the King or the States, or their Subjects during this War, *or at any time before upon any cauſe or pretence whatſoever, ſhould be totally expunged and buried in Oblivion, and all Actions at Law concerning the ſame.*

Now if any forced Interpretation ſhould be put upon this Article, (ſo generally Penned) that all private differences of *meum & tuum*, between particular perſons of either Nation ſhould be comprehended in this Article, it's void, becauſe its not in the Power or Prerogative of any Prince to hinder the due courſe of Law for a particular debt or perſonal injury. Admit that a *Hollander* were indebted to an *Engliſh*-man before the Treaty at *Breda* for goods Sold or ſent to make Sale of, and the *Dutch*-man ſhould plead ſpecially the Treaty at *Breda*; in Bar to an Action brought for the Money, it would not hold good in Law; for that it cannot be any ways intended that particular Debts and Actions ſhould fall under the conſiderations of ſuch Offences, Injuries, Loſſes and Damages mentioned in that Article; which generally relates to Kings and States.

As for Mr. *Carew*, his Plea to the *Scire Facias*, and Affidavit annexed, ſpeaks ſufficiently for his Juſtification: *Perſiſting, That no reſtitution is made for the* 151612 l. *or any part thereof*; *although Sir* James Butler *and others are raviſhing his Eſtate from him, upon Fore-cloſures of Equity, even for Moneys lent upon account of proſecuting this Cauſe.*

There was never ſuch a preſident ſince the Creation, that a particular Intereſt and Property ſo Liquidated and Eſtabliſhed for ſatisfaction and reparation (under thoſe circumſtances) according to the Laws and Statutes of this Realm; wherein ſo many Families are concerned, as the Creditors of Sir *William Courten* and his Son, Sir *Paul Pynder* and Sir *Edward Littleton* ſhould be ſo ſlighted and contemned

The Lord Chancellor well obſerved it concerned the publique, it's very true it concerns the publick Honour and Intereſt, the publick Juſtice and Equity of the Nation, that the Debt and Damages ſhould be ſatisfied and repayed.

There is no *Reaſon of State* that particular perſons ſhould Purchaſe a publick Peace at their own Charge, or that a private Intereſt ſhould be Sacrificed for the publick good, without ſatisfaction out of the Publick Purſe.

The Parliament of *Paris*, or *Monpilier*, cannot give Laws to the Parliament of *England*, that enacted if any man ſhould be ſpoiled by *French* or others at Sea, in peaceable times they ſhall have the right and benefit of the Law of *Marque* or *Reprizals*, to recover their Loſs, Damages and incident Charges; which by conſent of Nations being once aſcertained by a Judicial Act, muſt have its Extent, and Execution the end of the Law (*Satisfaction.*)

And this being agreeable to the Laws of God, the Laws of Nature, the poſitive Laws of Nations, and the Laws and Statutes of *England*; and the King having by His Letters Patents, under the Great Seal of *England*, purſuant thereunto, commanded and required all Judges of the Admiralty and Officers there for the time being, to be Aiding and Aſſiſting to *Turner* and *Carew*, their Executors Adminiſtrators and Aſſigns; and to take care that all things ſhall be favourably interpreted, and conſtrued in all reſpects, to the

the benefit and best Advantage of the said *Turnor* and *Carew*, their Executors, Administrators and Assigns; Witness himself at *Westminster*, the Letters were made Patents the 19*th*. day of *May*, in the 17*th*. year of his Reign

Now how the Actions and Proceedings of several Ministers and Officers of the Admiralty (and other Mercenary Mortals) do quadrare with the Kings Honour and Justice, (that have Issued out Warrants in the Kings name, to apprehend and seize the Persons and Goods of his Majesties Subjects; detain them in Prison and Irons until they were Tryed, as Fellons and Pyrats, for duly acting under his Majesties Royal Commission and Charter; grounded upon the Laws and Statutes of England; *Whereby they were found innocent and accquitted. Yet afterwars detained for Exhorbitant and Extrajudicial Fees of Registers and Marshalls of the Admiralty) is left to any Mankind to Judge.*

Conclusion.

THe Commons of *England* in Parliament in the Preamble of their Acts, acknowledging their thankefullness to His Majesty, for His aboundant care in their preservation at Sea, and the great charge necessary for the defence thereof, granted to the King at several times, during the two last short Wars between *England* and *Holland*, the Sum of *Five Millions Four Hundred and Forty Thousand Seven hundred and Fifty Pounds, Eleven Shillings and Eight Pence Sterling Money*; For extraordinary supplies toward the said Wars (whereof His Royall Highness the Duke of *York* received 120902 *l.* 15 *s.* 8 *d.* being one Months Tax, as a present for his Heroick Courage at Sea.) This vast Expence of Treasure, occasiond by the *Hollanders*, gave hopes to the Kingdom for greater returnes, than that only Debt of 151612 *l.* Liquidated and assertained for satisfaction.

That reason of State was depraved in the Lord Treasurer *Danby*, who parted with 600000 Pattacons (the price of so much *English* Bloud and Treasure) out of *England* to the Prince of *Orange*, that reaped the benefit of his Ancesters Offices and Honours by the last War, besides his tributes (as Lord High Admiral of the seven Provinces) out of 1500 Ships and thier Ladings, taken from the *English* by the *Dutch* Capers, (having his general Letters of *Marque*,) during that War.

There was no necessity therefore for those great Ministers, *H. Finch*, *C. S. Latimer*, *Ormond*, *Arlington*, *H. Coventry*, and *Marquess del Fresno*, to suffer the Debt of 151612. and Damages to remain incumbent upon the King or the States, when treble the value of that Debt was offered to the *English Ambassadors* in the year 1673. at *Cologne*, besides another Sum of Money in gross for the Fishries upon the *English Coasts*, to purchase a seperate peace with *England*. Divers Polliticians remarking the *English* Administrations of State and Justice, Blushed for several miscariages in our later days; Wherein the due course of Law hath been Obstructed, Strangers and others suffered to eat our Bread, and have disgested the very Bloud of many hundred Orphants and Widows: Some by Imbeaziling the spoyls of Wars, others in detaining our Monies and Goods; All men in Office turning deaf Ears to our Complaints; forgeting the Kings Honour; and that Justice which Establisheth the *Thorne*, and Exalts the *Nation*, being unmindful of those very periods, in his Majesties Speech to both Houses of Parliament, on the 24*th*. of *Novemb*. 1664. as follows,

Mr. SPEAKER,

AND you Gentlemen of the House of Commons, I know not whether it be worth My pains, to endeavour to remove a vile Jealousie, which some ill Men scatter abroad, and which I am sure will never sinck into the breast of auy Man who is worthy to sit upon your Benches; That when you have given me a Noble and proportionable Supply, for the Support of a War, I may be induced by some evil Councelors, (for they will be thought to think very respectively of my own Person,) to make a suddain Peace, and get all that Money for my own private occasion.

But let me tell you, and you may be most canfident of it, that when I am compelled to enter into a War, for the Protection, Honour, and Benefit of my Subjects; I will (God Willing) not make a Peace, but upon the obtaining and securing those ends, for which the War is entred into; and when that can be done, no good Man will be sorry for the determination of it.

How far the Plea and the Judgement given upon the Demurrer, concerning the 151612 *l.* will be reconciled to the Kings Speech, or the Law of the Land is left to those Members of both Houses that heard it, to resolve if any man can be safe in his Rights and Properties, under such presidents as these, which calls to my mind the Old Addage of Sir *Fulke Grevil*, Lord *Brook* in his time.

——— Mankind is both the Form
And matter wherewith all Tyranies transform;
For Kings can neither see, act nor devise,
Without the Peoples Hands, Hearts and Eyes:
And were not man by himself opprest,
Kings would not, Tyrants could not, make him Beast.

FINIS.

Ex Eol
9/29/24